IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL MISC. APPEAL No. 1381 of 2004

KAUSHALAYA
V/S
DHANRAM @ DHANRAJ & ORS

2. CIVIL MISC. APPEAL No. 1380 of 2004

SMT.LALI BAI
V/S
DHANRAM @ DHANRAJ & ORS

3. CIVIL MISC. APPEAL No. 1379 of 2004

SMT.TULSI BAI @ TAKHTI BAI
V/S
DHANRAM @ DHANRAJ & ORS

4. CIVIL MISC. APPEAL No. 1376 of 2004

SMT.AAMINA BEGHAM
V/S
DHANRAM & ORS

5. CIVIL MISC. APPEAL No. 1382 of 2004

GANESHLAL & ORS.
V/S
DHANRAM @ DHANRAJ & ORS

Mr. SANDEEP SARUPURIA, for the appellants

Mr. AK DADHICH, for the respondent Insurer

Date of Order : 3.3.2005

HON'BLE N P GUPTA,J.

ORDER

All these appeals have been filed against the common Judgment & award of learned Motor Accident Claims Tribunal, Rajsamand dated 25.5.2004, deciding five claim petitions, which had been consolidated by the learned Tribunal. The learned Tribunal by its impugned Award has dismissed all the claim petitions, by deciding issue nos. 1 and 4, and holding that claimants have been failed to prove that accident was caused by jeep no.RJ27/T-1591.

Vide order dated 14.9.2004, show cause notice was ordered to be issued for final disposal, and record was also requisitioned in all the claim petitions, which has been received, and notices have been served.

Mr.A.K.Dadhich, appears for the Insurer, while driver and owner have not entered appearance. Since only question involved is, about the identity of the vehicle which caused the accident, and there is no controversy raised about the liability of the insurer to be not there on any of the grounds available to the insurer, even in absence of owner and driver, at the request of learned counsel for the parties, the matters have been finally heard at this stage, and are being decided by this common Judgment.

The facts of the case are, that according to claimants, on 3.4.2002 at about 4.30 PM, between Railmagra to Fatehnagar, in the town-ship of Railmagra, claimants were sitting outside their houses, at that time, delinquent vehicle came, being driven at fast speed negligently, who hit all the victims. As a result of which, five ladies received injuries. Out of them, during treatment, Chandi Bai expired. On the basis of these facts, various claim petitions have been filed by the legal representatives of deceased Chandi Bai, and injured persons. According to the Judgment, defendant nos.1 & 2 contested the claim, pleading inter alia that wrong FIR was lodged at police station that no accident was caused by negligent driving of driver of jeep no.1591. Still, if the court finds the vehicle to be involved in the accident, then it was insured with defendant no.3, therefore, defendant no.3 is liable. The defendant no.3 insurer also contested the claim, pleading inter alia, that in the FIR, vehicle causing the accident has been described to be jeep no.RSL-1810, and jeep no.1591 has been wrongly added, while it did not cause any accident, and an alternative plea was taken that in case the court finds jeep no.1591 to be involved in the accident, then in that event, it was contended that accident was not caused by negligent driving of jeep.

The learned Tribunal framed as many as five issues. Issue no.1 related to causing of accident on the date and time by jeep no.1591 by its negligent driving, causing injuries to the victims, and death of deceased, while issue no.4 was, as to whether claim is liable to be

rejected in view of pleadings taken by insurer. Issue no.2 was as to whether vehicle was being driven during the course of employment of defendant no.2, while issue no.3 related to the quantum of compensation; and the persons liable for it. During trial, the claimants examined five witnesses, and no evidence was led on behalf of defendants.

As noticed above, the learned Tribunal has decided issue nos.1 and 4 together, and has decided them against the claimants, and on that basis, has not decided other issues no.2,3 and 5, and dismissed the claim petitions.

The learned Tribunal has found that in FIR, Ex.6, vehicle causing accident has been described as jeep no.RSL-1810, while it has been subsequently added jeep no.1591, and the informant Nizamuddin is son of one of victim Amina, who was an eye witness of the accident. It was also held various documents of investigation, including seizure memo of the jeep, or notice under Sec.133 of the Motor Vehicles Act, have not been produced, which might have shown the admission of the owner about the vehicle being involved in the accident, or the vehicle bearing marks of the accident, and it is not shown, as to on what basis, investigation concluded about the jeep in question, being involved in the accident. It was then noticed that none of the claimants have disclosed the jeep number, in their statement, while admittedly, jeep was seen prior to accident, and was stopped after the accident as well. Thus on the basis of these findings, those issues have been decided against the claimants.

Assailing the impugned Judgment, it is contended that Judgment is based on misreading of record, inasmuch as, in the written statement, filed by owner and driver, happening of the accident by jeep no.1591 was never disputed, rather the plea had been taken that the accident did not occur on account of negligent driving of driver of jeep no.1591. That being the position, when this fact was not in dispute,

the learned Tribunal was in error in expecting the claimants to lead further evidence to prove identity of the vehicle, simply because the insurer chose to dispute identity of the vehicle involved in the accident.

On the other hand, the learned counsel for the respondent, again read to me the findings of learned Tribunal including para nos.13, 16, 17, 18 & 19, and submitted that these findings are correct.

I have considered the submissions, and have gone through the record.

Since all the claim petitions have been consolidated, for the sake of convenience, I take the facts of claim petition no.230/02 (Aamina Vs. Dhanram and ors.). The claim petition was filed on 23.5.2002, and reply to the claim petition was filed on behalf of owner and driver on 16.4.2003, while reply was filed on behalf of insurer on 27.1.2003. Relevant averments about the accident are contained in para no.8 of the claim petition, which read as under:

8. दुर्घटना की तारीख, स्थान व समय : दुर्घटना दिनांक 3.4.2002 को समय 4.30 पी.एम. सांयकाल को स्थान ग्राम रेलमगरा से ग्राम फतहनगर के मध्य घटित हुई जो पक्की सड़क रेलमगरा से फतहनगर जाने वाली है प्रार्थीया व अन्य इस सड़क से काफी दूर जिमनें हाथ की ओर बैठी विश्राम कर रही थी । जीप संख्या आर.जे. 27 / टी.1591 को चालक रेलमगरा से फतेहनगर की ओर तेज गति, गफलत एवं लापरवाही से चलाता हुआ लाया व गलत साईड में आकर जीमनी ओर बैठी अमीना बेगन के टक्कर मार दी ।

Then in para no.28, further details of the accident have been pleaded. Sub-para nos.1 & 2 thereof reads as under:

28 {1} दुर्घटना का संक्षिप्त विवरण: यह कि दुर्घटना 3.4.2002 को सांयकाल 4.30 पी.एम. को ग्राम रेलमगरा से ग्राम फतेहनगर के मध्य वाहन जीप संख्या आर.जे. 27 टी. 1591 को विपक्षी ड्राईवर ने तेज गति, लापरवाही व गफलतपूर्ण ढंग से चलाकर कारित की जिसकी कार्यवाही थाना रेलमगरा द्वारा जरिये प्रथम सूचना संख्या 62/2002 से ड्राईवर से विपक्षी के विरूद्ध की गई ।

{2} आवेदक किस प्रकार क्षतिपूर्ति प्राप्त करने के अधिकारी है:- यह कि विपक्षी ड्राईवर ने वाहन जीप संख्या आर.जे.27 टी. 1591 को तेज गति, गफलत एवं लापरवाही से चलाकर दुर्घटना कारित की जिसे ड्राईवर के नाते विपक्षी संख्या 1 व विपक्षी संख्या 2 इस वाहन का पंजीकृत स्वामी होने से व ड्राईवर का नियोक्ता होने से व ड्राईवर के कार्यों के लिये विधिक रूप से जिम्मेदार होने से वह स्वयं व वक्त दुर्घटना यह वाहन वाहन स्वामी

की ओर से विपक्षी संख्या 3 बीमा कम्पनी के पास बीमित होने से सभी विपक्षीगण से इस क्लेम आवेदन में वर्णित क्षतियाँ संयुक्त: व पृथकत: प्रार्थीया प्राप्त करने की अधिकारी है।

In reply of the defendant nos.1 & 2, in para no.3, averments of para no.8 of the claim petition have been responded as under:-

3. यह कि क्लेम प्रार्थना पत्र की कलम संख्या 8 {आठ} में वर्णित तथाकथित दुर्घटना घटित होना स्वीकार है परन्तु यह दुर्घटना विपक्षी संख्या 1 की लापरवाही से घटित नहीं हुई है

Then in para no.6, averments of para nos.11, 12, 13, 14 and 15 of the claim petition have been denied, and it was pleaded, that no injuries were caused to the victim, and she is hale and hearty. Then in para no.7, averments of para nos.16,17,18 and 19 of the claim petition were denied, and it was pleaded, that accident has not occurred on account of negligent driving of defendant no.1. Then in para no.13, while generally denying various sub-paras no.1, 2, 3 & 4 of para no.28, it has been pleaded as under:-

13. यह कि क्लेम आवेदन पत्र के क्रम संख्या 28, 1, 2, 3, 4 गलत होकर अस्वीकार हैं ।

कि दिनांक 3.4.2002 को ग्राम रेलमगरा से ग्राम फतहनगर के मध्य दुर्घटना घटित होना स्वीकार है परन्तु दुर्घटना जीप संख्या आर.जे. 27 टी 1591 के चालक विपक्षी संख्या एक की गफलत एवं लॉपरवाही से घटित नहीं हुई है । अत: प्रार्थीया विपक्षी से किसी प्रकार की कोई राशि प्राप्त करने की अधिकारिणी नहीं हैं न ही विपक्षीगण प्रार्थीया को राशी अदायगी के लिये जिम्मेदार हैं । प्रार्थीया अन्तरिम सहायता के 25,000/- रूपये अथवा अन्य कोई राशि भी प्राप्त करने की अधिकारिणी नहीं हैं ।

प्रार्थीया की प्रार्थना पूर्णत: गलत होकर अस्वीकार हैं । प्रार्थीया कोई राशि प्राप्त करने की अधिकारि नहीं है न ही किसी राशी पर कोई ब्याज ही प्राप्त करने की अधिकारिणी हैं ।

Then in para no.1 of the additional pleas, it has been pleaded as under:-

1. यह कि दिनांक 3.4.2002 को ग्राम रेलमगरा से ग्राम फतहनगर के मध्य दुर्घटना अवश्य घटित हुई हैं परन्तु दुर्घटना वाहन जीप संख्या आर.जे.27 टी. 1591 के चालक विपक्षी संख्या एक की लापरवाही एवं गफलत के कारण घटित नहीं हुई है । दुर्घटना जीप का ब्रेक फेल होने से घटित हुई फिर भी यदि न्यायालय उक्त वाहन को दुर्घटना में

लिप्त माने तो विकल्प में निवेदन है कि विपक्षी संख्या दो की ओर से उक्त वाहन वक्त दुर्घटना विपक्षी संख्या 3 के यहाँ बीमित था इसलिए पारित संपूर्ण एवार्ड की राशी विपक्षी संख्या 3 {तीन} से दिलाई जावें ।

(*Emphasis Supplied*)

In my view, combined reading of the averments of claim and reply of the owner and driver, as narrated above, leave no manner of doubt, that parties were ad idem about the identity of the vehicle causing the accident, so much so, that in additional pleas, further specific plea has been taken, to the effect, that accident did not occur on account of negligence of the driver defendant no.1, but it occurred on account of failure of brake of jeep. This, rather amounts to taking a defence of 'mechanical brake-down,' by way of failure of brake system. Admittedly, the insurer had not moved the application under Sec.170 of the Motor Vehicles Act, and was not granted permission to take over all the defenses. In that view of the matter, simply because the insurer has taken the plea, denying identity of the vehicle being involved in the accident, cannot entitle the insurer to take a stand, inconsistent with the one taken by owner and driver. Since owner and driver, as noticed above, had admitted the involvement of the vehicle in question, in causing the accident, and had taken the plea, that accident did not occur on account of negligent driving of vehicle by defendant no.1, but occurred on account of 'mechanical brake-down' i.e. Failure of brake system, consideration taken into account by learned Tribunal, for deciding the issues no. 1 & 4, cannot be said to be even relevant, much less material, as when the fact is admitted by the defendant, it was not required to be proved by the claimants.

Thus I have no option but to set aside the findings of learned Tribunal on issue no.1 and 4.

The question then arises is, as to whether accident occurred on account of any negligence in driving of vehicle in question, and quantum of compensation, to which the claimants may be entitled, in the

event of issue of negligence being decided in their favour. But my predicament is, that the learned Tribunal has neither gone into the question, as to whether accident occurred on account of any negligence in driving of vehicle in question, nor on the issue relating to the quantum, nor any submissions have been made before me in regard to the above aspects. Therefore, the only option available to me is to set aside the findings of the learned Tribunal on issue no.1 and 4, to set aside the impugned Judgment & Award, and remand the matter back to the learned Tribunal, for fresh decision in accordance with law on the question of negligence, quantum and other issues as framed. However since it is nobody's case that adequate opportunity of leading evidence was not granted by the learned Tribunal, the Tribunal is directed to decide the matter on the basis of the material already on record, and most expeditiously.

Accordingly, the appeals are allowed, impugned Judgment & Award of learned Tribunal is set aside, and the matter is remanded back to the trial court, with a direction to decide the same afresh, in accordance with aforesaid observations/directions.

The parties shall bear their own costs of these appeals.

(N P GUPTA),J.

/Srawat/